

Appn. Number 09/625,017 (Levine, David) GAU 3621 Amnt. D

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REMARKS**Daniele Does Not Teach The Division of Subscription Fees Defined in the Claims of the Previous Amendment.**

The previous amendment, Amendment C, added the following to part four of independent Claims 1 and 20, in order to further define the way in which the subscription fees of all the users were divided according to the use of a single user (or small group of users making up the sample): "...said quantification serving to divide the subscription fees of the plurality of users based on the updated metric". Amendment C also further defined, in part three of Claims 1 and 20, that the report from which the updated metric was drawn was from a single user, and represented a *sample of the prior use by the plurality of users*.

Claims 1 and 20 must be read in their entirety - i.e., the Amendment C addition to part four must be read in light of the definition of "updated metric" contained in part three. This is significant because neither Daniele nor Fleming nor Logan disclose a quantification that divides the subscription fees of the plurality of users based on an updated metric of the type defined in part three.

The Office Action states (page 2) that "Given their broadest interpretation, the recitation 'said quantification serving to divide the subscription fees of the plurality of users based on the updated metric' is interpreted to mean simply that each subscription fee paid by each user is divided according to a sample of that users prior use, as taught by Daniele". This would be true if Claim 1 and 20 read "said quantification serving to divide the subscription fees of the plurality of users". But the claims also add "based on the updated metric", and because of the way the updated metric is defined in part three, this defines the claims over Daniele (and Fleming and Logan).

Amended Claims 1 and 20 Define Over Daniele, Fleming, Logan, and Any Combination Thereof.

Nevertheless, in an effort to further clarify the claims, the term "collective" has been added to part four of Claims 1 and 20, to further define the division of the subscription fees of the plurality of users. As agreed in the 4/21/04 interview, neither Daniele nor Fleming nor Logan, nor therefore any combination of these references, disclose dividing the *collective* subscription fees of the plurality of users based on the updated metric which comes from the single user or small group of users making up the sample.

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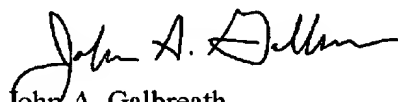
Of note, in support of a broad interpretation of part four, the Office Action (page 2) points out that "the claims do not specifically recite that the *total sum* of the subscription fees of the plurality of users is divided and allocated to the royalty owners". Even though as discussed above Applicant disagrees with such a broad interpretation, the further addition of "collective", which is akin to "total sum", inarguably defines the claims over the prior art.

Finally, since independent claims 1 and 20 now define patentably over the prior art, the dependent claims in the application also define patentably.

CONCLUSION

For all of the above reasons, Applicant submits that the claims are now in proper form, and that the claims all define patentably over the prior art. Therefore Applicant submits that this application is now in condition for allowance, which action they respectfully solicit.

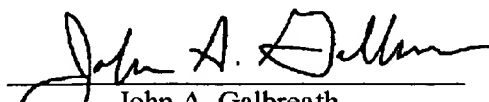
Very respectfully,


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Certificate of Fax Transmission: I certify that on the date below, this document and referenced attachments, if any, was faxed to the U.S. Patent Office at 703-872-9306.

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